

CITY OF CORVALLIS
COUNCIL POLICY MANUAL

POLICY AREA 9 - RIGHT-OF-WAY MATTERS

CP 2013-9.08 **Building Encroachments in the Public Right-of-Way**

Adopted May 6, 2013

9.08.010 **Purpose**

This policy identifies the primary uses of public right-of-way as public transportation and utility related and identifies the conditions under which private structure encroachments, deemed subordinate to utility and transportation needs, may be considered.

9.08.020 **Goals**

Establish a consistent and efficient process that protects the public's use of, and investment in, public right-of-way when considering requests for private building encroachments.

9.08.030 **Background**

In certain areas of the community, the Land Development Code promotes urban, downtown-style streetscapes. In these locations, pedestrian activity is promoted by encouraging the placement of buildings at or near the public right-of-way line. This can result in conflict when such development proposes to incorporate building features extending beyond the building face. While these encroachments can add visual ambiance to the streetscape and allow private developers to increase building area by utilizing public property, they can create conflicts with public transportation and utility needs, as well as raise questions surrounding the equity of allowing private use of public right-of-way.

Council Policy 2013-9.08

9.08.040 Applicability

This policy will apply to new building encroachment requests made subsequent to its adoption. This policy will be applied to building encroachments existing prior to its adoption only upon receipt of a permit application for substantial improvements to the building as defined by the Land Development Code.

The administrative review processes described herein are applicable only in areas that are intended for an urban, downtown-style streetscape. These areas include the Central Business District, Riverfront Zone, and various locations identified as major and minor neighborhood centers in the Land Development Code.

Right-of-way encroachments outside of these zones will not be allowed unless the circumstances are unique and the property owner demonstrates that the encroachment is in the public's interest. All such requests will be reviewed and approved by City Council.

9.08.050 Definitions

- a. ADA – Americans with Disabilities Act

9.08.060 Policy

9.08.060 This policy identifies certain right-of-way encroachments by privately owned structures that may be reviewed administratively by staff and approved without City Council action provided the encroachments do not impact public utilities, public safety, street trees, or pedestrian, bicycle and vehicular use of the right-of-way. All building encroachments not specifically identified in this policy for administrative review will require a review and approval by the City Council.

This policy defines the processes that will be used to facilitate review of building encroachment requests that will be handled administratively as well as those requiring City Council approval.

Council Policy 2013-9.08

9.08.061 Guiding Principles

- a. Public right-of-way is a limited resource with a number of competing demands. Priority use of the public right-of-way should be maintained for transportation and utility needs. Reserving right-of-way for these uses allows private property owners to maximize the development potential of adjacent parcels. All other requests for use of the public right-of-way should be considered secondary to transportation and utility needs and only approved if it can be done so without a negative impact to these uses.
- b. Occupied building encroachments provide a financial benefit to the building owner and as such, reimbursement to the public for the use of public property is appropriate.
- c. As required by State law, the City Council finds that space occupied by private encroachment, approved under the conditions described herein, is not necessary for public use.

9.08.061 Exemptions

- a. Certain building encroachments required or allowed by the Land Development Code at the time of adoption of this policy, including but not limited to, pedestrian weather protection and signage. However, balconies constructed to meet weather protection requirements of the Land Development Code are subject to the review requirements of this policy.
- b. Existing encroachments by buildings which are identified by the Land Development Code as Designated Historic Resources.
- c. Exterior building illumination.

9.08.062 Alleys

- a. Due to the space limitations, alley encroachments are prohibited consistent with the Land Development Code section 4.10.70.05.b.1.

9.08.063 Allowable Subsurface Building Encroachments for Administrative Review

- a. Building footings which are located at least 8-feet below grade, and project no more than 12-inches into public right-of-way.

9.08.064 Allowable Above-Ground Building Encroachments for Administrative Review

Council Policy 2013-9.08

a. 0 to 8-Feet Above Grade

1. Architectural and mechanical features projecting no more than 12-inches into the right-of-way, provided that a pedestrian route meeting minimum ADA standards is maintained around the feature and the feature does not present a pedestrian hazard.
2. No encroachment will be allowed that provides additional occupied building space.

b. Greater than 8-Feet Above Grade

1. Architectural and mechanical features projecting no more than 12-inches into the right-of-way.
2. Roof overhangs, balconies, and other building features encroaching no more than 1-inch for every inch of sidewalk clearance above 8-feet. Maximum encroachment allowed is 4-feet. Balconies constructed to meet weather protection requirements of the Land Development Code can encroach 6-feet provided 12-feet of clearance is provided.
3. Awnings or canopies not required for pedestrian weather protection over building entrances and exits provided:
 - 8-feet of clearance is maintained above the sidewalk;
 - The structure does not extend more than two-thirds of the distance from the property line to the curb, with a horizontal distance to the curb not less than 2-feet;
 - No structural support is placed in the public right-of-way;
 - The structure is designed for removal in the event that work within the sidewalk area requires it.

9.08.065 Review and Approval Process

a. Minor Building Encroachments of 12-Inches or Less

1. Requests for minor encroachments will be submitted and reviewed as part of the building permit process.
2. No additional fees will be charged in association with the review and approval of minor encroachments.

Council Policy 2013-9.08

3. Authorization of an encroachment will be identified in the approved building permit.
- b. Intermediate Building Encroachments of Greater Than 12-Inches, But No More Than 4-Feet
 1. Requests for intermediate encroachments will be submitted to the City Engineer for processing.
 2. The City Engineer will facilitate a staff review process that will include Public Works for a review of utility and transportation impacts, Parks and Recreation for a review of street tree impacts, Community Development for City code compliance, and the Fire Department for a review of impacts to public safety. If the proposed encroachment is in the vicinity of franchise utilities, the applicant may need to obtain concurrence from the franchise that the encroachment will not interfere with the operation and maintenance of its facility.
 3. An application fee intended to recover 100% of staff costs will be charged for review of intermediate encroachment requests. The fee will be initially set at \$650, referenced to the 2012 Consumer Price Index (CPI-W), Urban Wage Earners and Clerical Workers, Portland, of 229.779. The fee will be adjusted annually in October using the previous year's CPI-W.
 4. An annual fee will be charged for any intermediate building encroachment that provides habitable space. The initial annual fee will be calculated using the City of Seattle Term Permit Fee Methodology (attached). The calculation will use the market land value of the property benefitting from the encroachment as determined by the Benton County Assessor's Office. The rate of return used in the calculation will be consistent with that rate in use by the City of Seattle at the time the license is established.
 5. Authorization of an intermediate encroachment will be through the establishment of a License which will include insurance requirements if occupied, indemnification language acceptable to the City Attorney, and conditions of approval as needed.
 6. Insurance coverage for occupied encroachments will be of the type and amount sufficient to meet the requirements of State law as they apply to the potential liability of the City.

Council Policy 2013-9.08

c. Major Building Encroachments

1. All building encroachments not identified as Minor or Intermediate will be considered as a Major Encroachment and require City Council approval.
2. Major Encroachments are discouraged by City Council. However, in the event that an owner of private property desires to pursue such a request, application will be made to the City Engineer who will develop a recommendation to the City Council through the Urban Services Committee. A Major Encroachment will only be approved by City Council under the following conditions:
 - The applicant has demonstrated that it is not feasible to construct the facilities on private property;
 - The movement of current and future pedestrian, bicycle, and vehicular traffic will not be negatively impacted by the encroachment.
 - The encroachment will not limit the City's ability and the ability of franchise utilities to provide service to the community.
 - The encroachment is in the public's interest.
3. An application fee intended to recover 100% of staff costs to review and develop a staff report and recommendation to City Council will be charged for major encroachment requests. The fee will be initially set at \$1,360, referenced to the 2012 Consumer Price Index (CPI-W), Urban Wage Earners and Clerical Workers, Portland, of 229.779. The fee will be adjusted annually in October using the previous year's CPI-W.
4. Authorization of a major encroachment will be through the establishment of a Lease or License which will include insurance requirements, indemnification language, and other provisions deemed necessary by the City Attorney.

Council Policy 2013-9.08

5. An annual fee will be charged for major encroachments as follows:
 - For non-occupied encroachments, the anticipated staff cost to administer the major encroachment agreement;
 - For occupied encroachments, the fee will be determined using the Seattle Term Permit Fee Methodology as described in section 1.01.065.b.4.
6. Insurance coverage for occupied encroachments will be of the type and amount sufficient to meet the requirements of State law as they apply to the potential liability of the City.

9.08.066 Execution of Agreements to Occupy Public Right-of-Way

- a. When an agreement to occupy the public right-of-way is required, it is the intent of this policy that the agreement be established with a single entity, typically the entity in control of the structure exterior. It is not the intent of this policy to have multiple agreements when there is more than one ownership interest in a given building such as is the case with condominiums.

9.08.070 Appeal of Administrative Decision

Appeals of staff decisions will be heard by the City Council's Urban Services Committee who will forward a recommendation on to the full Council for final determination.

9.08.090 Review and Update

This policy shall be reviewed every two years by the Public Works Director and updated as appropriate.